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May 17, 2007

Office of the Secretary  
Federal Communications Commission  
445 -12th Street, S.W.  
Washington, D.C. 20554

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**FCC - MAILROOM**

RE: Appeal to the Federal Communications Commission  
Barberton City School District, Billed Entity No. 129522

To Whom It May Concern:

Enclosed please find an Appeal and Request For Review of a decision by the Schools and Libraries Division of the USAC relative to the school noted above.

Enclosed are an original and five copies of the Appeal and Request for Review. Please file the original and four of the copies and return one time-stamped copy to me in the enclosed self addressed-stamped envelope.

Please direct all communication regarding this appeal to my attention at the address noted above. Thank you for your assistance in this matter.

Yours truly,

*Linda Schreckinger Sadler*

Linda Schreckinger Sadler

Encl.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:

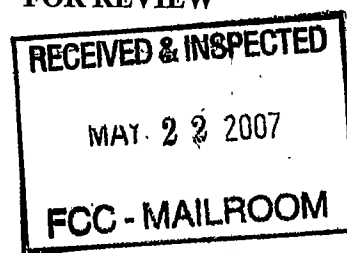
Appeal of Decision of the  
Universal Service Administrator by

Barberton City School District  
Barberton, OH

CC Docket No. 02-6

**APPEAL AND REQUEST  
FOR REVIEW**

To: Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554



This Request for Review is made to the Federal Communications Commission ("FCC") by Barberton City School District ("Barberton") by and through its duly authorized attorney, pursuant to 47 C.F.R. §§ 54.719(c) and 54.721. Pursuant to the Commission's authority as stated in 47 C.F.R. §1.3, Barberton seeks relief from a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") denying funding relative to:

Funding Year: 2006-2007

Form 471 Application Number: 523254

Funding Request Number Appealed: 1451109, 1451145, 1458617 and  
1458690

Billed Entity Number: 129522

FCC Registration No.: 0006351373

Date of Administrator's Decision on Appeal: March 20, 2007

## **Contact Information**

(1) To discuss this appeal: Linda Schreckinger Sadler Esq.  
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## **SLD's Reason for Funding Denial:**

The Funding Commitment Decision Letter ("FCDL") issued by SLD gave the same explanation for denying Internal Connections and Basic Maintenance funding for all above-referenced FRNs: "Given demand, the funding cap will not provide for Internal Connections/Basic Maintenance of Internal Connections at your approved discount level to be funded." The Administrator's decision on appeal affirmed this decision, finding that Barberton did not demonstrate that the entities at issue were qualified at a discount percentage which would entitle those entities to receive Priority Two Funding for FY 2006.

## **Summary**

Barberton City School District ("Barberton") seeks review of a decision by the Schools and Libraries Division ("SLD") of the Universal Service Administrative

Company ("USAC") relative to the funding denials issued on the four (4) FRNs listed above. In both the FCDL and Administrator's Decision on Appeal the SLD denied Internal Connections and Basic Maintenance funding to Barberton for Funding Year 2006 ("FY2006") for the reason that the discount level for the entities requesting services was at 79%, which was below the discount threshold for applications that would receive Priority Two funding in the 2006 program year. Barberton does not dispute that denying funding below the 80% threshold for FY2006 is correct. It disputes the SLD's discount level calculation for the entities seeking Internal Connections and Basic Maintenance services which caused them to fall below the funding threshold.

#### **Statement in Support of Appeal**

In October 2006, Barberton received a Program Integrity Review ("PIA") inquiry from John S. Pope of the SLD. In the PIA, one of the questions posed by Mr. Pope was a request for documentation supporting Barberton's requested discount percentage of 90% for five (5) of its entities, all of which were listed in its FCC Form 471 application No. 523254. Specifically, these entities are: Portage Elementary School (BEN 48219), Light Middle School (BEN 48225), Highland Middle School (BEN 48230), Santrock Elementary School (BEN 48231) and Johnson Elementary School (BEN 48232). 47 C.F.R. § 54.505(b)(1) clearly states that the data obtained through alternative mechanism methodology may be used to determine a school's level of need. In compliance with the alternative methodology procedures prescribed by FCC E-rate program rules, the requested 90% discount for each of these schools was supported by a letter from the Food

Service Director documenting the survey methodology used by the District together with a copy of the survey form itself.

While National School Lunch Program ("NSLP") data is the primary means of determining a school's discount level, the FCC allows the use of several alternative mechanism methodologies to determine an entity's discount level.<sup>1</sup> The FCC recognizes these methodologies as valid means of determining the level of need upon which discount calculations for eligible products and services may be based. Barberton elected to use the survey method to determine the discount level of the five (5) schools at issue in this appeal.

For each of the five (5) schools for which it was seeking to validate a 90% discount rate, Barberton followed the Form 471 Instructions for survey methodology. It distributed forms to all families in each of the five (5) schools. The forms contained all necessary components. After the survey responses were received by Barberton, it ascertained that the level of returns met the minimum requirement of 50%. Barberton then tallied the responses. Using that data, Barberton calculated the discount percentage for each individual school in question to be 90%. The survey data and a letter from the Director of Food Services were sent to John Pope in response to his request for documentation supporting a 90% discount for the five (5) schools. The requested documentation was provided within the prescribed time period yet Mr. Pope chose to ignore the provided documentation and reduced the discount percentage for the five

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<sup>1</sup> See 47 C.F.R. § 54.505(b)(1), (2); and *Academia Claret, Puerto Rico, et al.* DA 06-1907, Adopted: September 21, 2006

entities to 79%. Not only did he seemingly ignore the documentation provided, he made no further inquiry and requested no further information and/or documentation.

Moreover, the SLD completely failed to provide Barberton with any explanation whatsoever as to why the requested discount percentage was modified. Since the SLD made an across-the-board discount percentage determination of 79% for all of the five entities, Barberton arrived at the conclusion that Mr. Pope could not have considered its documentation, for if he had, he could not have arrived at his discount calculations. This is not the first time this PIA reviewer has applied standards that are not mentioned on the SLD's website or in the FCC rules.

The calculation mechanism used by Barberton followed FCC approved guidelines. It was fully supported by all necessary documentation. The SLD website states:

If a school has sent a questionnaire to all of its families and it receives a response rate of at least 50 percent, it may use that data to project the percentage of eligibility for discount purposes for all students in the school.

Barberton complied with all FCC/SLD requirements when it employed survey methodology as its chosen alternative mechanism for calculating the discount percentage for its five (5) schools. Since it contained all the necessary survey elements, Barberton used the Ohio NSLP form for its survey form. Use of the NSLP form is deemed by the District to be an expedient method for gathering student financial data required for many federal and state programs without imposing the substantial burden on families of completing a multitude of forms. The NSLP data can be used for NSLP purposes, E-rate

survey purposes, Title I purposes, grant data purposes, No Child Left Behind purposes etc. Based on even the most current information available on the SLD website, E-rate program rules do not prohibit using a NSLP form for alternative methodology/survey purposes.

While the SLD has the right to review data to determine accuracy and procedural compliance, it does not have the right to completely disregard the information without explanation. Since the documentation provided by Barberton supported its requested discount percentage of 90% the information it submitted had to have been repudiated by Mr. Pope. Had this information been properly reviewed and considered, Barberton would have attained a discount percentage sufficient to entitle its entities to Internal Connections and Basic Maintenance funding.

### **Conclusion**

Since the discount percentage methodology employed by Barberton followed FCC approved alternative discount methods and was fully supported by all necessary documentation, the SLD erred when it failed to validate a discount percentage of 90% for each of Barberton's five schools at issue in this appeal. Having complied with the rules and regulations of the E-rate program, Barberton City School District is entitled to receive Internal Connections and Basic Maintenance funding for these schools. Failure to receive this funding will impose undue hardship upon the District. The funding decision of the SLD should be reversed and full funding granted at 90% as requested.

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for the FRNs set forth herein.
3. That funds be set aside to totally fund Barberton County School District's funding requests.

Respectfully submitted,



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